

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMIAH DONOVAN,

No. 1:20-cv-00694-DAD-EPG (HC)

Plaintiff,

v.
RALPH DIAZ,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

Defendant.

(Doc. Nos. 2, 9)

Petitioner Jeremiah Donovan is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 15, 2020, the assigned magistrate judge issued findings and recommendations, recommending that petitioner's motion for stay and abeyance pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005) (Doc. No. 2) be granted, that petitioner be granted leave to file a first amended petition setting forth both his exhausted and unexhausted claims for relief, and for good cause shown,¹ staying the mixed first amended petition. (Doc. No. 9.) These findings and

¹ The court apologizes to petitioner for the court's lengthy delay in issuing this order. This court's overwhelming caseload has been well publicized and the long-standing lack of judicial resources in this district has reached crisis proportion. Unfortunately, that situation sometimes results in a submitted matter being overlooked for a period of time and that occurred with respect to this motion.

1 recommendations were served upon petitioner and contained notice that any objections were to be
2 filed within fourteen (14) days from the date of service of that order. On June 29, 2020, petitioner
3 filed objections to the findings and recommendation and lodged a first amended petition. (Doc.
4 Nos. 10, 11.)

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
6 *de novo* review. Having carefully reviewed the entire file, including petitioner's objections, the
7 court concludes that the findings and recommendation are supported by the record and proper
8 analysis.

9 In the objections, petitioner requests that the *Rhines* stay be applied to his
10 contemporaneously filed First Amended Petition (Doc. No. 11), lodged on June 29, 2020. (Doc.
11 No. 10 at 2.) The court clarifies that this is what will occur. As the assigned magistrate directed,
12 the *Rhines* stay and abeyance is to apply to petitioner's First Amended Petition (Doc. No. 11),
13 lodged on June 29, 2020, which the Clerk of Court is directed to file on the docket pursuant to
14 this order.

15 Accordingly,

- 16 1. The findings and recommendation issued on June 15, 2020 (Doc. No. 9) are adopted in
17 full;
- 18 2. Petitioner's motion for a stay and abeyance (Doc. No. 2) pursuant to *Rhines v. Weber*,
19 544 U.S. 269 (2005) is granted;
- 20 3. The Clerk of Court is directed to file the first amended petition (Doc. No. 11);
- 21 4. The proceedings are stayed pending petitioner's administrative exhaustion of his state
22 remedies;
- 23 5. Within thirty (30) days of the date of service of this order, petitioner shall pursue state
24 court remedies;
- 25 6. Petitioner is directed to file a status report with this court within thirty (30) days of the
26 date of service of this order and every ninety (90) days thereafter;

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- 1 7. Within thirty (30) days following the final order of the state courts, petitioner shall
2 notify the court that the unexhausted claims have been exhausted and to request that
3 the stay be lifted and the case proceed; and
4 8. This action is referred back to the magistrate judge for proceedings consistent with this
5 order.

6 IT IS SO ORDERED.

7 Dated: March 4, 2021

Dale A. Troyd
8 UNITED STATES DISTRICT JUDGE

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